REMARKS

By this amendment, claims 2 and 11 have been canceled without prejudice or disclaimer and claims 3, 5, 8, 9, 12, 14, 17 and 18 have been amended. Currently, claims 1, 3-10, and 12-18 are pending in this application.

Rejection under 35 U.S.C. 102(e)

Claims 1, 4, 6, 7, 10, 13, 15, and 16 were rejected under 35 U.S.C. 102(e) as anticipated by Packer (U.S. Patent No. 6,285,658). Claims 1 and 10 have been amended to incorporate the limitations of claim 2 and 11, respectively, rendering this rejection moot. Accordingly, applicant respectfully requests that the rejection under 35 U.S.C. 102(e) be withdrawn.

Rejection under 35 U.S.C. 103

Claims 2 and 11 were rejected under 35 U.S.C. 103 as unpatentable over Packer in view of McCullough et al. (U.S. Patent Publication No. 0,010,866A1). This rejection is respectfully traversed in view of the following arguments.

The Examiner correctly states that Parker fails to teach that the server is a VPN server, and states that McCullough discloses a VPN manager 130. Thus, the Examiner concludes that "it would have been obvious to one of ordinary skill in the art, at the time of the invention, to provide the VPN manager as taught by McCullough in Packer's server with the motivation to prevent unauthorized intruders of accessing confidential data in the network." Applicants respectfully disagree.

Merely finding one piece of art that discloses one half of the system and another piece of art that discloses another half is not sufficient to establish, *prima facie*, that the

claims are obvious. See <u>In re Dembiczak</u>, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references."). "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight." <u>Id</u>.

In this case, Packer discloses a bandwidth allocation management system and McCullough discloses a VPN system. The references themselves do not teach or suggest that they should be combined or that they may be advantageously combined. Rather, the proposed motivation to make the combination is the result of the combination "to prevent unauthorized intruders of accessing confidential data in the network."

This is legally insufficient, because the result of the combination did not exist until the Examiner proposed making the combination. Therefore the result of the combination, without more, cannot be the genesis for the combination -- there must be some motivation to seek the result or to look for the combination. Note that, as provided by the MPEP, "[t]he mere fact that references <u>can</u> be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." <u>MPEP</u> @ 2143.01, p. 2100-124 (emphasis in original). Since the Examiner failed to present any objective evidence of motivation to combine the references, applicant respectfully submits that the Examiner failed to establish that the claims are *prima facie* obvious, and respectfully requests that the rejection under 35 U.S.C. 103 be withdrawn.

Conclusion

In view of foregoing claim amendments and remarks, it is respectfully submitted that the

application is now in condition for allowance and an action to this effect is respectfully requested. If

there are any questions or concerns regarding the amendments or these remarks, the Examiner is

requested to telephone the undersigned at the telephone number listed below.

If any fees are due in connection with this filing, the Commissioner is hereby authorized

to charge payment of the fees associated with this communication or credit any overpayment to

Deposit Account No. 502246 (Ref: 13361).

Respectfully Submitted

Dated: May 24, 2002

_____
John C. Gorecki
Registration No. 38,471

John C. Gorecki, Esq.
Patent Attorney
165 Harvard St.
Newton, MA 02460
Tel: (617) 796-9024
Fax: (617) 795-0888

VERSION WITH MARKINGS TO SHOW CHANGES MADE

Submitted herewith is a marked-up version of the amended claims to show changes made in the foregoing Amendment.

IN THE CLAIMS

Claims 2 and 11 have been canceled without disclaimer or prejudice, and claims 1, 3, 5, 8, 9, 10, 12, 14, 17 and 18 have been amended as follows:

--1. (Amended) A method for a server that manages bandwidth of a remote link, comprising:

assigning a portion of the bandwidth to at least one application group; and

metering packets belonging to the application group;

wherein the server is a VPN server.--

2. (Canceled)

-- 3. (Amended) [The method of claim 1] A method for a server that manages bandwidth of a remote link, comprising:

assigning a portion of the bandwidth to at least one application group; and

metering packets belonging to the application group;

wherein the server is directly connected to other links having larger bandwidth than the available bandwidth of the remote link.--

--5. (Amended) [The method of claim 1] <u>A method for a server that manages bandwidth of a remote link, comprising:</u>

<u>assigning a portion of the bandwidth to at least one application group; and</u>

<u>metering packets belonging to the application group;</u>

wherein the packets belonging to the application group contend equally for the portion of the bandwidth.--

--8. (Amended) [The method of claim 1 further comprising] <u>A method for a server that manages bandwidth of a remote link, comprising:</u>

<u>assigning a portion of the bandwidth to at least one application group;</u>

<u>metering packets belonging to the application group; and</u>

allowing a user to specify the bandwidth of the remote link from a user interface.--

--9. (Amended) [The method of claim 1 further comprising] <u>A method for a server that manages bandwidth of a remote link, comprising:</u>

<u>assigning a portion of the bandwidth to at least one application group;</u>
<u>metering packets belonging to the application group; and</u>

allowing a user to specify the portion of the assigned bandwidth from a user interface.--

--10. (Amended) A system for managing bandwidth of a remote link comprising:

a server

a contention pool having a portion of the bandwidth for at least one application group; and

a meter for metering the packets belonging to the application group;

wherein the server is a VPN server.--

11. (Canceled)

--12. (Amended) [The system of claim 10] A system for managing bandwidth of a remote link comprising:

a server

a contention pool having a portion of the bandwidth for at least one application group; and

a meter for metering the packets belonging to the application group;

wherein the server is directly connected to other links having larger bandwidth than the available bandwidth of the remote link.--

--14. (Amended) [The system of claim 10] A system for managing bandwidth of a remote link comprising:

a server

a contention pool having a portion of the bandwidth for at least one application group; and

a meter for metering the packets belonging to the application group;

wherein the packets belonging to the application group contend equally for the contention pool.--

--17. (Amended) [The system of claim 10 further comprising] <u>A system for managing</u>

<u>bandwidth of a remote link comprising:</u>

<u>a server</u>

<u>a contention pool having a portion of the bandwidth for at least one application group;</u>

and

<u>a meter for metering the packets belonging to the application group; and</u>

<u>a user interface that allows a user to specify the bandwidth of the link.</u>--

--18. (Amended) [The system of claim 10 further comprising] <u>A system for managing</u>

<u>bandwidth of a remote link comprising:</u>

<u>a server</u>

<u>a contention pool having a portion of the bandwidth for at least one application group;</u>

and

<u>a meter for metering the packets belonging to the application group; and</u>

<u>a user interface that allows a user to specify the assigned portion of the bandwidth.</u>--